SUPREME COURT, U. S.

Supreme Court, U.S.
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# Supreme Court of the United States

October Term, 1962

No. 37

CIVIL

GENE DURFEE and LAURA DURFEE,

*Petitioners,*

vs.

JULIA E. DUKE,

*Respondent.*

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

To: The Honorable: The Chief Justice and Associate Justices of The Supreme Court of The United States:

Your petitioners, Gene Durfee and Laura Durfee, respectfully pray that a writ of certiorari issue to review the judgment and decision of the United States Court of Appeals for the Eighth Circuit entered in the above action on September 18, 1962, rehearing of which was denied on October 11, 1962.

## OPINIONS BELOW

The opinion of the United States Court of Appeals is reported at 308 F. 2d 209. A copy of such opinion is reprinted at pages 1-25 in the separate Appendix furnished herewith. The opinion of the United States District Court in this case is not reported but a copy thereof entitled "Memorandum Opinion, Findings of Fact, and Conclusions of Law" is likewise reprinted in the Appendix at pages 28-44. Also necessary to a full understanding of this case is the opinion of the Supreme Court of Nebraska in *Durfee v. Keiffer*, 168 Neb. 272, 95 N. W. 2d 618. This opinion also appears in the Appendix at pages 44-59.

## GROUNDS OF JURISDICTION

The judgment sought to be reviewed is the judgment of the United States Court of Appeals for the Eighth Circuit entered September 18, 1962. See Appendix, page 26. This judgment reversed the judgment of the United States District Court for the Western District of Missouri, St. Joseph Division.

A petition for rehearing and a request for hearing en banc were duly filed and were overruled on October 11, 1962. The order overruling the petition and request appears in the Appendix at page 27. There have been no extensions of time within which to petition for certiorari.

The statutory provision believed to confer on this court jurisdiction to review the judgment in question by writ of certiorari is 28 U. S. C. § 1254(1).

## QUESTIONS PRESENTED FOR REVIEW

The following questions are presented for review of this Court:

1. Where a quiet title action is brought in one state and the question of the court's jurisdiction of the subject matter, which is dependent solely upon resolution of a fact question based on conflicting evidence, is fully litigated in the trial court, and on an appeal taken by the losing claimant subject matter jurisdiction is again litigated on trial de novo in the Supreme Court of the state, is the Supreme Court's judgment entitled to full faith and credit in the courts of a sister state in a subsequent title action involving the same land brought by the losing claimant against the prevailing claimants?

> The Court of Appeals held categorically that the full faith and credit clause does not preclude a second forum's inquiry into questions of the first forum's personal or subject matter jurisdiction and did not limit the rule permitting such inquiry to cases in which the jurisdictional questions were not actually litigated in the first forum.

2. Where a quiet title action is brought in one state and the question of the court's jurisdiction of the subject matter, which is dependent solely upon resolution of a fact question based upon conflicting evidence, is fully litigated in the trial court, and on appeal taken by the losing claimant subject matter jurisdiction is again litigated on trial de novo in the Supreme Court of the state, is the Supreme Court's judgment res judicata in the courts of a sister state in a subsequent title action involving the same land

brought by the losing claimant against the prevailing claimants?

The Court of Appeals held that the doctrine of res judicata did not preclude inquiry by the second forum into the subject matter jurisdiction of the first, even though the question had been actually litigated in the trial court and again in the Supreme Court in the first case and the jurisdiction of the Supreme Court had been invoked by the losing claimant who brought the subsequent action.

## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case involves the following constitutional and statutory provisions:

(1) U. S. Constitution, Article IV, Section 1 (U. S. C. A. Constitution, Article IV, Section 1) which provides:

"Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Law prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

(2) Act June 25, 1948, c. 646, 62 Stat. 947, 28 U. S. C. A., Section 1738, which provides:

"The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

"The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

"Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

## STATEMENT OF THE CASE

In 1956, Gene and Laura Durfee (hereinafter described as petitioners) filed in the District Court of Richardson County, Nebraska, an action against Julia E. Duke (hereinafter described as respondent) and her tenants to quiet title to certain land located in the Missouri River bottoms, which land was once an island in the river, and is now located a short distance east and south of Rulo, Nebraska, and west and south of Fortesque, Missouri.

Patents covering the land were issued by the General Land Office of the United States in 1860 and were later filed with the Register of Deeds of Richardson County, Nebraska. The petitioners claimed the land under a Richardson County, Nebraska, Sheriff's tax foreclosure sale and the respondent claimed the land through a Holt County, Missouri, swamp land patent.

The middle of the main channel in the Missouri River forms the boundary between Missouri and Nebraska and

the determination of the controversy, both on the question of jurisdiction of subject matter (whether the land was in Nebraska or Missouri) and the question of the merits (ownership of the land) depended solely upon an issue of fact, that is, whether the river changed its course by accretion or avulsion. The parties were not and are not in disagreement as to the law concerning accretion and avulsion on mid-channel state boundaries. At this point it suffices to say that if in fact the channel change involved resulted from avulsion the land remained Nebraska land and title was in the petitioners; and if from accretion, it became Missouri land and title was in respondent.

The District Court of Richardson County found the issues in favor of petitioners and quieted title in them. *Respondent* then appealed to the Supreme Court of Nebraska where on trial de novo on the record made in the District Court the Supreme Court of Nebraska affirmed the judgment. *Durfee v. Keiffer*, 168 Neb. 272, 95 N. W. 2d 618.

The Nebraska Supreme Court specifically found that the doctrine of avulsion applied, that the land was Nebraska land, that the court had jurisdiction of the subject matter of the action and that title to the land was in the petitioners.

The respondent did not seek review by this court of the judgment of the Nebraska Supreme Court. Rather, the respondent, a Missouri resident, on May 23, 1959—less than two months after the decision of the Nebraska Supreme Court—filed the instant title action in the Circuit Court of Holt County, Missouri, praying for a decree that fee simple title to the land was in her and that the peti-

tioners be forever enjoined and restrained from asserting or claiming any right, title or interest in or to any of the property.

The case was removed to the United States District Court for the Western District of Missouri, St. Joseph Division, by petitioners, who are residents of Nebraska. The United States District Court found that it had jurisdiction by virtue of the diversity of citizenship of the parties and the amount in controversy which exceeded in value the sum of $10,000.00 exclusive of interest and costs.

The United States District Court, the Honorable R. M. Duncan, Judge, held that the judgment of the Nebraska Supreme Court was res judicata and that the issues involved therein could not be relitigated by the same parties in Missouri. The court, however, said that in his opinion the decision of the Nebraska Supreme Court was erroneous and that if the question had been presented to him initially he would have found for respondent.

The respondent appealed from the judgment of the United States District Court to the United States Court of Appeals for the Eighth Circuit and that Court, sitting in division, held that the full faith and credit clause as implemented by congressional action did not apply to the case because jurisdiction of subject matter was involved. The court further held that the doctrine of res judicata did not apply.

As to res judicata, the Court of Appeals apparently thought, inasmuch as jurisdiction of the subject matter was involved, the subject matter was land, and the question was whether this border-line river land was located

in one or another of two different states, that Missouri courts were not bound by the decision of the Nebraska Supreme Court. The Court of Appeals pointed out the five factors stated in the American Law Institute's Restatement of Judgments and Restatement of Conflicts to be important to a decision on whether there was an overriding policy which would defeat the application of the doctrine of res judicata and held that the Restatement correctly stated the law as this court has developed it. The Court then found four of the five factors in favor of the petitioners but held that considerations of policy nevertheless required a decision that the United States District Court sitting in Missouri could make an independent inquiry between the same parties into the question of jurisdiction of the subject matter.

## ARGUMENT AMPLIFYING REASONS FOR ALLOWANCE OF WRIT

This case presents questions of public importance concerning full faith and credit and res judicata. Petitioners urge that review by this court of the judgment of the Court of Appeals is called for primarily for three reasons:

(1) The Court of Appeals herein decided a federal question involving full faith and credit in a way which conflicts with applicable decisions of this court and those of other United States courts of appeals.

(2) The Court of Appeals herein decided a question of res judicata in a way which conflicts with applicable decisions of this court and those of other United States courts of appeals.

(3) If the Court of Appeals was correct in determining that the issues herein "appear to possess some first impression aspects in the areas of conflict of laws and res judicata" the issues are of such public importance that this court should resolve them now.

In this type of case it is difficult to avoid argument on the merits in presenting contentions supporting allowance of the writ. Petitioners will, however, limit argument to what is considered essential to the establishment that certiorari is in order. If certiorari is granted, we shall then argue fully the question of the reasoning found in the decision of the Court of Appeals and the correctness of its ultimate decision.

**Full Faith and Credit**

The Court of Appeals quickly disposed of the petitioners' contention that the judgment of the Nebraska Supreme Court in *Durfee v. Keiffer*, 168 Neb. 272, 95 N. W. 2d 618, is entitled to full faith and credit in this case. See the court's opinion, Appendix pages 6, 7. The court held:

> "It is clearly established, however, that the full faith and credit clause, while foreclosing repetitious litigation of non-jurisdictional matters, does not preclude a second forum's inquiry into questions of the first forum's personal or subject-matter jurisdiction."

Examination of the cases cited by the Court of Appeals to support the rule announced discloses that in *none of them* was the jurisdictional question actually litigated in the first court. Furthermore, the rule announced by this court in those cases *specifically limits* the application of the rule permitting a second court to make in-

dependent inquiry into the first court's jurisdiction to cases in which such jurisdiction has not been litigated by the parties who subsequently seek to attack it. Thus in *Adam v. Saenger*, 1938, 303 U. S. 59, 62, 82 L. Ed. 649, 652, 58 S. Ct. 454, 456, this court said:

> "But in a suit upon the judgment of another state the jurisdiction of the court which rendered it is open to judicial inquiry. Chicago L. Ins. Co. v. Cherry, 244 U. S. 25, 61 L. Ed. 966, 37 S. Ct. 492, and when the matter of fact or law on which jurisdiction depends *was not litigated in the original suit* it is a matter to be adjudicated in the suit founded upon the judgment. Thompson v. Whitman, 18 Wall. 457, 21 L. Ed. 897." (Emphasis added).

As stated in *Davis v. Davis*, 1938, 305 U. S. 32, 39, 40, 83 L. Ed. 26, 29, 59 S. Ct. 3:

> "Art. 4, § 1, requires that judicial proceedings in each State shall be given full faith and credit in the courts of every other State. The Act of May 26, 1790, 1 Stat. at L. 122, Chap. 11, as amended, Rev. Stat. § 905, 28 U.S.C.A. § 687, declares that judicial proceedings authenticated as there provided shall have such faith and credit given to them in every 'court within the United States as they have by law or usage in the courts of the State from which they are taken.' Thus Congress rightly interpreted the clause to mean not some but full credit. Haddock v. Haddock, supra (201 U. S. 567, 50 L. Ed. 868, 26 S. Ct. 525, 5 Ann. Cas. 1). The Act extended the rule of the Constitution to all courts, Federal as well as State. Mills v. Duryee, 7 Cranch 481, 485, 3 L. Ed. 411, 413."

Again in *Williams v. North Carolina*, 325 U. S. 226, 230, 89 L. Ed. 1577, 1582, 65 S. Ct. 1092:

> "It is one thing to reopen an issue that has been settled after appropriate opportunity to present their

contentions has been afforded to all who had an interest in its adjudication. This applies also to jurisdictional questions. After a contest these cannot be relitigated as between the parties. Forsyth v. Hammond, 166 U. S. 506, 517, 41 L. Ed. 1095, 1099, 17 S. Ct. 665, Chicago L. Ins. Co. v. Cherry, 244 U. S. 25, 30, 61 L. Ed. 966, 969, 37 S. Ct. 492, Davis v. Davis, supra."

In *Stoll v. Gottlieb*, 1938, 305, U. S. 165, 83 L. Ed. 104, 59 S. Ct. 134, this court pointed out that a former judgment in a state court is conclusive between the parties and their privies in a federal court when entered upon an actually contested issue as to the jurisdiction of the court over the subject matter of the litigation. This court referred to *Forsyth v. Hammond*, 1897, 166 U. S. 506, 41 L. Ed. 1095, 17 S. Ct. 665. We shall subsequently herein discuss the Forsyth Case, supra, in connection with the doctrine of res judicata. We note however that the case is also authority on the question of full faith and credit and is cited as supporting authority in cases which apply that doctrine to subject matter jurisdiction.

**The Doctrine of Res Judicata**

The questions of full faith and credit and res judicata overlap in this case and authorities cited to support petitioners' contentions in connection with the argument under one question generally apply in connection with the argument under the other. The prime example of this is perhaps *Forsyth v. Hammond*, 166 U. S. 506, 41 L. Ed. 1095, 17 S. Ct. 665. Although the Forsyth Case is cited by this court in cases which approach the question from the standpoint of full faith and credit and fully sustain the petitioners' position thereunder, we discuss it under the

heading of "res judicata" because the Court of Appeals did so and perhaps it will be more convenient for this court in determining whether to grant certiorari for us to follow as closely as possible and in chronological order the opinion of the Court of Appeals.

In the course of the opinion of the Court of Appeals, *Forsyth v. Hammond*, supra, is referred to but the court declined to apply its holding to this case. We submit that the Forsyth Case is as much the law today as it was when decided in 1897 and that the decision herein is in direct conflict with this court's pronouncements in Forsyth.

In the Forsyth Case respondent Caroline M. Forsyth sought by injunction in the federal court to forbid the City of Hammond, Indiana, from collecting taxes on certain land annexed to the city by an earlier state court decree. The city contended that the earlier decree was res judicata and decisive of the injunction case and the respondent contended that it was void because the enlargement of a city was a matter of legislative rather than judicial cognizance. This court upheld the contention of the city on the ground that the respondent had taken an appeal to the Supreme Court of Indiana from the earlier decree of the trial court against her in the annexation proceedings and had in that appeal attacked the validity of the decree on the ground of lack of jurisdiction. Thus at pages 517, 518 of 166 U. S., pages 1099 and 1100 of 41 L. Ed, this court said:

> "If action by the state tribunals stopped with the decree of the trial court, it might be said that the plaintiff did not voluntarily seek that forum. She was brought in by appropriate process, and compelled to there litigate the question. But after an adverse

decree she insisted that it was not only erroneous but void, and voluntarily commenced an action in the supreme court of the state to have that claim established. She invoked the jurisdiction of that court. She summoned the city of Hammond into that forum and there challenged the decree of the circuit court, challenged it for error and also for lack of jurisdiction. The questions both of error and of jurisdiction were certainly judicial in their nature and questions within the undoubted cognizance of the supreme court. She voluntarily sought its judgment. Can she, after its decision, be heard in any other tribunal to collaterally deny the validity thereof? Does not the principle of *res judicata* apply in all its force? Having litigated a question in one competent tribunal and been defeated, can she litigate the same question in another tribunal, acting independently, and having no appellate jurisdiction? * * * The principles controlling the doctrine of *res judicata* have been so often announced, and are so universally recognized, that the citation of authorities is scarcely necessary. Though the form and causes of action be different, a decision by a court of competent jurisdiction in respect to any essential fact or question in the one action is conclusive between the parties in all subsequent actions."

In the Forsyth case as here, real property as subject matter jurisdiction was involved. There, as here, the one subsequently attacking the prior decree voluntarily sought the judgment of the appellate tribunal in the first case. The instant case is even stronger for application of res judicata for the reason that, unlike the Forsyth case, this later action is identical to the prior one, that is, both are title actions, the second having been brought solely to relitigate in another forum the same matter litigated in the first with the former defendant as the plaintiff in the subsequent action.

The decision of the Court of Appeals denying application of the doctrine of res judicata is also in conflict with such cases as *Stoll v. Gittlieb*, 1938, 305 U. S. 165, 83 L. Ed. 104, 59 S. Ct. 134; *Jackson v. Irving Trust Co.*, 1941, 311 U. S. 494, 85 L. Ed. 297, 61 S. Ct. 326; *Davis v. Davis*, 1938, 305 U. S. 32, 83 L. Ed. 26, 59 S. Ct. 3; *Treinies v. Sunshine Mining Co.*, 1939, 308 U. S. 66, 84 L. Ed. 85, 60 S. Ct. 44; and *Chicot County Drainage District v. Baxter State Bank*, 1940, 308 U. S. 371, 84 L. Ed. 329, 60 S. Ct. 317, holding that subject matter jurisdiction having once been litigated may not again be inquired into in a subsequent action between the same parties. Further the decision conflicts with the principle announced in such cases as *Baldwin v. Iowa State Traveling Men's Association*, 1931, 283 U. S. 522, 75 L. Ed. 1244, 51 S. Ct. 517 and *Chicago Life Insurance Company v. Cherry*, 1917, 244 U. S. 25, 61 L. Ed. 966, 37 S. Ct. 492, holding that where jurisdiction of the person of a defendant is actually litigated, the adjudication may not subsequently be attacked in another forum.

Evidently the Court of Appeals itself recognized that its decision in this case conflicts with *Forsyth v. Hammond*, supra, for it felt constrained to say (appendix page 23):

> "Any apparent out-of-jointedness of the older case of *Forsyth v. Hammond*, supra, can be explained by the absence there of a multi-state conflict and by the natural hesitation of the court to intrude upon what it felt was a matter involving construction by state courts of a state's constitution and statutes."

**Matters of Public Importance Involved**

The Court of Appeals based its decision on what the court considered to be a strong policy against pre-

cluding a court of an adjoining state from making an independent determination of the situs of border line land which has previously been determined in the courts of the adjoining state, though the determination is made in private litigation and cannot bind either of the two states themselves.

It is clear that neither Nebraska nor Missouri will be bound by a decision in this private litigation. The two states must settle any boundary dispute they may have by compact approved by Congress (Constitution Article I, § 10) or by litigation initiated in this court (Constitution Article III, § 2). See *Williams v. North Carolina*, 1944, 325 U. S. 226, 230, 89 L. Ed. 1577, 1582, 65 S. Ct. 1092. While the Court of Appeals recognized this fact the court concluded that a state's sovereignty, the validity of its land titles and its power to tax might "indirectly" be affected by private litigation such as this. So the court concluded that as a matter of policy where land is concerned the court of the second state should have the opportunity to satisfy itself of the first court's subject matter jurisdiction. Based upon this conclusion the Court of Appeals held (Appendix page 24):

> "After careful consideration we conclude that, for a land case such as this, a policy of careful recognition of jurisdictional limitations and of permitting inquiry into the basis of subject-matter jurisdiction outweighs any conflicting res judicata principle."

It is somewhat difficult to follow the reasoning that prompted the above conclusion. A subsequent Missouri decision holding Missouri to be the situs of the land in controversy would certainly have no more sanctity and

no more conclusiveness than the prior Nebraska decision holding Nebraska to be the situs. If the Nebraska judgment based on fully litigated factual determinations is not entitled to full faith and credit, neither would a subsequent conflicting Missouri judgment be so entitled. The two decisions, while settling nothing between the states of Nebraska and Missouri, would merely prolong the private litigation between petitioners and respondent which even now has been in court for six long years. On the other hand, a holding that the Nebraska decision is entitled to full faith and credit and that the matter once determined by the Supreme Court of Nebraska at the instance of the respondent herself is conclusive as between these parties would terminate this litigation.

As stated in *Forsyth v. Hammond*, supra, quoted in *Stoll v. Gottlieb*, 305 U. S. 165, 173, 83 L. Ed. 104, 109, 59 S. Ct. 134:

> "The question is not whether the judgment of the Supreme Court [in this case the Supreme Court of Nebraska] would be conclusive as to the question involved in another action between other parties, but whether it is not binding between the same parties in that or any other forum".

The present case does not involve an attempt by the courts of one state to exercise authority over land clearly within the confines of another state. The Court of Appeals itself found that (Appendix page 20):

> "The Nebraska courts' lack of jurisdiction is not particularly clear".

Furthermore the Court of Appeals recognized that the dispute was one of fact rather than law and that the fact issue had been fully litigated in the Nebraska Courts.

Land controversies are common along state boundary rivers and especially along the Missouri River which forms the boundaries of Nebraska and Iowa and of Nebraska and Missouri. See for example *United States v. 171.74 Acres of Land, etc.*, 1962 D. C. Neb., 206 F. 2d 322. That case was decided on June 30, 1962, and was reported in the September 10, 1962 issue of Federal Supplement, only eight days before this decision was rendered by the Court of Appeals. In *United States v. 171.74 Acres of Land*, supra, Judge Robert Van Pelt reached a decision contrary to this one and his decision was called to the attention of the Court of Appeals in our petition for rehearing.

If there can be no finality to private litigation over purely factual questions involving the law of avulsion and accretion that results from the activities of rivers such as the mighty Missouri, it should be this court that makes such determination. If in this case full faith and credit and res judicata must yield to a policy based upon an assumed possible indirect interest of the states themselves who are not bound by the decision, it should likewise be this court that makes that declaration.

The time is ripe for the determination of the questions posed by the decision herein. Litigants should be advised whether there can be finality attributed to a decision in this type of proceeding in which subject matter jurisdiction and merits of the case depend upon the identical factual issue which has been fully litigated in the courts of one state, or whether the losing party after having invoked the jurisdiction of the highest court of the first state may ignore that decision and file another suit upon the same cause of action in a sister state.

If respondent had thought that the Nebraska courts overreached their territorial limitation in holding the land to be in Nebraska based upon conflicting evidence as to its location she should have sought relief in this court. Failing in that, she should not be permitted to attack the judgment of the Nebraska Supreme Court whose jurisdiction she herself invoked. In any event, whether this attack is proper should be determined now in the interest of justice and as an aid to prevention in the future of multiplicity of suits and useless, expensive and prolonged litigation. It is a question of such public interest that its resolution should not be postponed.

## CONCLUSION

The Court of Appeals held that the full faith and credit clause of the Constitution and the statute which extends the constitutional protection to judgments subsequently attacked in federal as well as in state courts do not apply to jurisdictional matters, even though such matters have been fully litigated. This holding is in direct conflict with decisions of this court and with the underlying reasons for the protection afforded by the full faith and credit provisions. The exception of jurisdictional matters from such protection has heretofore always been limited to questions (whether jurisdiction of the person or subject matter is involved) which have not actually been litigated between the parties. In the past if the parties have had their day in court and have actually litigated the question in the first court the decision on jurisdiction has always been accorded full faith and credit the same as other litigated issues.

Even the cases cited by the Court of Appeals to support its decision on full faith and credit disclose the limitation which the court failed to recognize. None of those cases involved actually litigated issues of jurisdiction and some of them point out this distinguishing feature and specifically limit the rule announced therein to jurisdictional matters not previously litigated by the parties.

The Court of Appeals also held that res judicata does not apply to this case. The court seemed to come to the brink of a holding that it does apply; but then the court found a "policy" which it held to take precedence over that doctrine. This holding, we submit, likewise is in conflict with many prior decisions of this court.

If, as the Court of Appeals said, this case presents "first impression aspects in the areas of conflict of laws and res judicata" this court should review the judgment of the Court of Appeals, to the end that any restriction to be ingrafted in connection with constitutional and statutory guarantees of full faith and credit and the time honored decisions of this court thereon and on the question of res judicata, be declared by the United States Supreme Court itself rather than one of the courts of appeals.

Petitioners respectfully pray that certiorari be granted to review the judgment and decision of this case.

Respectfully submitted,

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## PROOF OF SERVICE

I, Harold W. Kauffman, one of the attorneys for petitioners herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on November 12, 1962, I served copies of the foregoing Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit, together with the accompanying Appendix upon respondent by depositing the same in a United States Mailbox with first class postage prepaid, addressed to John A. Wiltse at 1622 Stone Street, Falls City, Nebraska and to Robert A. Brown, Tootle-Enright Bank Building, St. Joseph 2, Missouri, such being the post office addresses of said counsel of record for respondent.

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